

## **FREQUENTLY ASKED QUESTIONS ABOUT EXCLUSIVE AGENCY AGREEMENTS**

If a seller and a listing agent enter into an Exclusive Agency Agreement, rather than an Exclusive Right to Sell Agreement, the seller retains the right to sell the property himself without paying a commission, or agrees to pay a stated commission to any buyer's agent who produces a successful contract. In some listings, the seller may choose non-representation, or may agree to participate in certain parts of the process, such as setting his own appointments, showing the property, or even negotiating the purchase contract directly with the buyer or the buyer's agent. The following are some answers to frequently asked questions about Exclusive Agency Agreements or other types of listing company/seller agreements.

### **Q. What if I bring a buyer to a listed property, write an offer and the seller tells me the listing agent will not be involved in the transaction?**

A. If you bring a buyer to view a property not listed by your company and you write an offer on the property, you should deliver the offer to the listing agent (please see 201 KAR 11:045 (Section 2)), unless the listing agent has waived the right to submit the offer and the buyer or the buyer's agent prefers or chooses to deal directly with the seller. The listing agent can waive this right in the "comments" section of the MLS listing.

### **Q. If I prefer to deliver the offer to the listing agent, what is the listing agent's responsibility once I deliver the offer?**

A. The listing agent must submit the offer to the seller without delay (please see 201 KAR 11:045 (Section 1)). Examples of submission would be mailing, faxing, hand-delivering or arranging for pickup at the listing agent's office.

### **Q. Can I legally deal with the seller if the property is still listed?**

A. Since the seller's property is listed by another real estate company, the law will prohibit you from negotiating directly with the seller (please see KRS 324.160(4)(p)), unless that right is waived by the seller and the listing agent. If the seller and the listing agent have waived the right of exclusive negotiation or contact, you may legally deal directly with the seller.

### **Q. What if the seller is listed as the "call coordinator" on the MLS? Can I legally talk to the seller?**

A. Yes. If the seller has agreed with his agent to be a call coordinator, then the listing agent has waived his or her right to speak exclusively with the seller and is giving you permission to call the seller directly for an appointment.

**Q. What if the seller tells me the listing agent has not provided a seller disclosure form?**

A. All listing agents must provide the seller with a seller disclosure form for seller completion.

**Q. What if the seller tells me the listing agent is not using agency disclosure forms?**

A. All licensees are required to use agency disclosure forms unless the transaction is exempted from agency disclosure under the law. (Please remember that the forms no longer need to be exchanged between agents.)

**Q. What if the seller tells me that the listing agent has not provided him with any information relative to lead-based paint?**

A. Lead-based paint disclosure is a federal requirement and is not specifically enforced by the Real Estate Commission. The Real Estate Commission enforces state law only. However, the Real Estate Commission is not aware of any law or ruling which would exempt any listing agent from duties under the lead-based paint law. Please call 1-800-424-LEAD (5323) with any questions you have on this issue.

**Q. When the property is listed through an Exclusive Agency Agreement, how should the advertising be handled?**

A. KRS 324.117 requires all listed properties to be advertised in the name of the real estate company or the principal broker. The Commission suggests that, if you take an Exclusive Agency Agreement, you should inform the sellers in your listing agreement that they should put the name of the real estate company or the principal broker in any advertisements they may place on their own.

**Q. What if the seller starts asking me for advice or has questions about the deal? How do I handle this?**

A. If you are representing the buyer, do not allow the seller to put you into a situation which may be considered an implied agency role. If the seller starts asking you questions about the purchase contract, the best way to handle this is to inform the seller that you represent the buyer only and that any questions or concerns should be directed to the listing agent or to the seller's attorney.